

**REMARKS**

Claims 17–23, 25 and 46–49 and 51–59 are pending in the application.

Claims 17–23, 25, 58 and 59 have been withdrawn from consideration.

Claim 46 has been amended herein, and claim 50 was canceled.

Reconsideration of the claims is respectfully requested.

**35 U.S.C. § 102 (Anticipation)**

Claims 46, 48–49, 52–53 and 55 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,192,059 to *Khan et al.* Claims 46, 48–49, 51–52 and 54–55 were rejected under 35 U.S.C. § 102(b) as being anticipated by “fabrication Technique for Fully Recessed Oxide Isolation,” IBM Technical Disclosure Bulletin vol. 19, no. 10, pp. 3947-3950 (March 1, 1977) (“IBM TDB”). These rejections are respectfully traversed.

A claim is anticipated only if each and every element is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 at p. 2100-73 (8<sup>th</sup> ed. Rev. 2 May 2004).

Independent claims 46 recites an uplift in portions of the nitride layer proximate to the peripheral edge caused by reoxidation to eliminate asperities from the polysilicon. Such a feature is not found in the cited references. *Khan et al* does not teach reoxidation of the entire gate structure, such as would cause an uplift in peripheral portions of the nitride 5 and eliminate asperities on the bottom of polysilicon 15, but instead teaches growing oxide only on an upper surface of the

polysilicon layer 15. The IBM TDB does not teach reoxidation of the gate structure, since the polysilicon is completely encased in nitride and cannot be oxidized.

Therefore, the rejection of claim 46, 48–49 and 51–55 under 35 U.S.C. § 102 has been overcome.

**35 U.S.C. § 103 (Obviousness)**

Claims 47, 56 and 57 were rejected under 35 U.S.C. § 103(a) as being obvious over *Khan et al.* This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-128 (8th ed. rev. 2 May 2004). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.*

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

As noted above, independent claim 46, from which the rejected claims depend, recites a feature not found in *Khan et al.*

Therefore, the rejection of claim 47, 56 and 57 under 35 U.S.C. § 103 has been overcome.

**Double Patenting**

Claims 46–55 were rejected under the judicially created doctrine of obviousness type double-patenting over claims 1–13 of U.S. Patent No. 5,710,453. This rejection is respectfully traversed.

The instant application is a division of parent application serial number 08/159,461 (now US 6,780,718). The cited patent, US 5,710,453, is also a division of the same parent application, both divisionals being necessitated by a restriction requirement within that parent application. Accordingly, no double patenting rejection may be made over the parent application or related divisionals. MPEP § 804.01, p. 800-30.

Therefore, the rejection of claim 46–55 under 35 U.S.C. § 102 has been overcome.

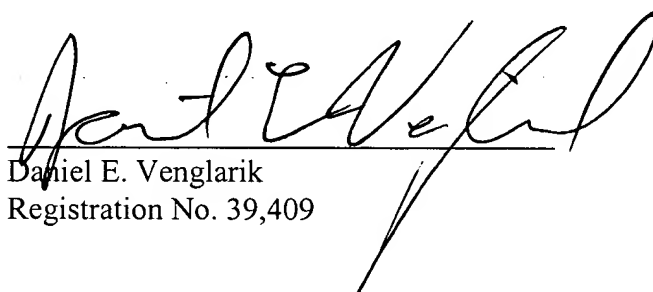
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 8-31-05



Daniel E. Venglarik  
Registration No. 39,409

P.O. Box 802432  
Dallas, Texas 75380  
(972) 628-3600 (main number)  
(972) 628-3616 (fax)  
E-mail: *dvenglarik@davismunck.com*